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09/825,585	04/04/2001	Schyun Kim	2550-004	3719

7590

07/08/2003

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EXAMINER

WOODWARD, ANA LUCRECIA

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09825535

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 7/3/01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-26 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-26 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-26 are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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DETAILED ACTION

Election/Restrictions

1. Claims 1-26 are generic to a plurality of disclosed patentably distinct species defining the resin compositions. The election of an ultimate species of composition, i.e., with specific species of components present, is requested. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Claim Rejections - 35 USC § 112

2. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 10, it is unclear if or how the preamble language "high scrap recycle content" limits the embodiments wherein there is no thermoplastic scrap material present. In this regard, it is noted that the language "up to 50% by weight" with respect to the content of scrap material includes zero as the lower limit.

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In claim 1, line 15, and also in claims 10 and 19, the metes and bounds of the "olefin copolymer" are indeterminate in scope. It is unclear as to whether said copolymer is limited to copolymers of the recited ethylene, propylene and diene monomers.

In claim 1, line 22 and also in claim 10, it is unclear how the term "further comprised" limits the scope of the scrap material. That is, does said scrap material contain other materials than those recited?

In claims 1 and 10, the term "trimellitate" is queried.

In claims 2, 11 and 20, the term "polymer" lacks express antecedent basis.

In claims 4 and 13, the basis upon which the recited amounts have been determined is not apparent.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-3, 5-12 and 14-26 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. 6,207,754 (Yu).

This rejection relates to the embodiment of the present claims wherein the melt blend contains zero amount of thermoplastic scrap material and zero amount of poly(ethylene-co-vinyl acetate) and the blending composition contains zero amount of plasticizer, that is, when the lower limit of the amounts qualified by the terminology "up to" is zero.

Yu discloses a flexible polyolefin composition comprising a melt blend of an impact modified polypropylene resin composed of a thermoplastic propylene polymer and an impact modifying olefin elastomer copolymer and a plastomer resin intimately blended in proportions with respect to one to another to provide a resin having a modulus of less than 40,000 psi.

The disclosure of the reference meets the requirements of the present claims both with respect to the types of materials added and their contents. It is reasonably believed that the compositions of the reference, containing essentially the same components as applicants', will inherently meet all the characteristics defining applicants' claimed compositions. The onus is shifted to applicants to establish that the products of the present claims are not the same as or obvious from those set forth by the prior art.

Claim Rejections - 35 USC § 103

6. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,852,115 (Young et al).

Young et al disclose polymeric blends formed from recycled nylon carpet scrap and selected compatibilizing agents and/or a poly(ethylene-co-omylacetate) and the products produced from such blends. The scrap materials exemplified contain polyamides among other

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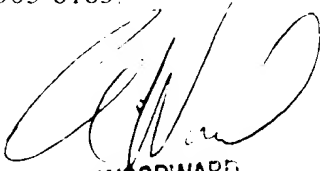
materials and meet the requirements of the presently claimed thermoplastic scrap material. The compatibilizing agents exemplified include ethylene-vinyl acetate copolymer (meeting the presently claimed poly(ethylene-co-vinyl acetate)) and modified and unmodified polypropylene (meeting or embracing the presently claimed polypropylene). The reference exemplifies various compositions meeting the terms of the present claims in terms of the types of materials added.

In essence, the disclosure of the reference differs from the present claims in not expressly exemplifying compositions comprising at least 16 percent by weight of the polypropylene material. In this regard, it is noted that the amount of polypropylene compatibilizing component can be up to about 60% (claims, etc.) and, as such, it would have been obvious to one having ordinary skill in the art to have prepared compositions meeting the terms of the present claims with respect to the amount of polypropylene added. Accordingly, absent evidence of unusual or unexpected results, no patentability can be seen in the presently claimed subject matter.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (703) 308-2401. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-8183.



ANA WOODWARD
PRIMARY EXAMINER